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SERVICE DATE – APRIL 6, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36836

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

Docket No. FD 36836 (Sub-No. 1)¹

CSX TRANSPORTATION, INC.—TERMINAL TRACKAGE
RIGHTS—NORFOLK SOUTHERN RAILWAY COMPANY AND NORFOLK &
PORTSMOUTH BELT LINE RAILROAD COMPANY

Digest²: The Board approves, subject to conditions, the application by Norfolk Southern Corporation and Norfolk Southern Railway Company for authority, going forward, to control Norfolk & Portsmouth Belt Line Railroad Company. The Board also denies the responsive application by CSX Transportation, Inc., which seeks trackage rights on facilities over which NPBL operates, and addresses various other motions.

Decision No. 14

Decided: April 6, 2026

Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS) seek the Board's authorization under 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 of their acquisition of control of Norfolk & Portsmouth Belt Line Railroad Company (NPBL), a Class III rail carrier operating in Norfolk, Portsmouth, and Chesapeake, Va. CSX Transportation, Inc. (CSXT), in a responsive application in Docket No. FD 36836 (Sub-No. 1), is seeking terminal trackage rights.

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

The Board finds that NS's application, as conditioned by the Board, satisfies the standard for approval under 49 U.S.C. § 11324(d). Additionally, the Board will deny CSXT's responsive application for the reasons discussed in this decision.³

The Board's approval of control here is based on finding that, as conditioned, the transaction would not likely result in a substantial lessening of competition, the creation of a monopoly, or restraint of trade in freight surface transportation. See 49 U.S.C. § 11324(d)(1). The competitive concerns on the record, raised largely by CSXT as the other Class I carrier that serves the area, are the result of the consolidation of the rail network several decades ago as well as agreements regarding the formation and governance of NPBL. CSXT essentially seeks to modify the longstanding rate structure for switching services by NPBL, and NS, as one of only two owners of NPBL (CSXT being the other), would have veto authority over such a change even without control. The core argument about diminution of competition is therefore not a result of NS's control of NPBL, and denial here would not alleviate such a concern.⁴ Furthermore, the longstanding configuration of the NPBL and associated industries, the history and development of the area, and the market for the traffic about which CSXT is concerned, provide additional underpinnings for the finding here. These issues are discussed in detail below.

BACKGROUND⁵

NPBL and the Port of Virginia

NPBL currently operates approximately 36 miles of rail line from Portsmouth to Norfolk and approximately 27 miles of trackage rights over NS track from Norfolk to Chesapeake. (NS Prefiling Notification 12-13, 42, Feb. 14, 2025.)⁶ NPBL's system connects with CSXT at Portsmouth, with NSR and the Chesapeake and Albemarle Railroad at Chesapeake, and with the Buckingham Branch Railroad at Norfolk. (Id. at 58.) NPBL's system also connects with the facilities of 21 industrial customers in the Norfolk/Portsmouth area, (NPBL Reply 2, Nov.20,

³ While attempting to avoid references to confidential or highly confidential information in Board decisions, the Board reserves the right to rely upon and reference such information in decisions when necessary. See Canadian Nat'l Ry.—Control—Iowa N. Ry., FD 36744, slip op. at 1 n.3 (STB served Jan. 14, 2025). The Board determined that it could not discuss the findings in this decision without disclosing certain confidential information.

⁴ In transactions subject to section 11324(d), the Board considers competitive harms that result from the transaction itself. See, e.g., Soo Line Corp.—Control—Cent. Me. & Que. Ry. US, FD 36368, slip op. at 4 (STB served May 4, 2020). While CSXT's responsive application fails with regard to the factors considered in the instant application, nothing in this decision should be read to prejudice CSXT's separate application for terminal trackage rights under 49 U.S.C. § 11102 in Docket No. FD 36859 that is currently in abeyance.

⁵ Citations to pleadings on the record will cite to the cumulative page numbers to the extent they are available.

⁶ NS's February 14, 2025 submission, discussed below, will be referred to as the Prefiling Notification.

2025), and the Portsmouth Marine Terminal, (NS Prefiling Notification 51, Feb. 14, 2025). Finally, as discussed below, NPBL offers service to and from Norfolk International Terminal (NIT), a deepwater marine terminal in Norfolk, via trackage rights that NPBL holds over NS's facilities that lead to NIT.

NPBL was established in 1896 as a joint undertaking of eight regional rail carriers in the Norfolk/Portsmouth area.⁷ (See id. at 57.) In 1897, those eight carriers entered into an operating agreement (the NPBL Participation Agreement) to govern NPBL's purpose, structure, and operations. (See id.; CSXT Pet. to Reject CSXT-1-75 to -82, Feb. 27, 2025.) As stated in the NPBL Participation Agreement, the participating carriers established NPBL "for the mutual benefit of each in the interchange of business" between Pinner's Point, Va., and Berkley, Va. (Id. at CSXT-1-76.) NPBL was to be a "separate organization in which all are to be equally interested and each to have an equal representation" that would construct facilities to connect to the systems of each of the participating carriers. (Id. at CSXT-1-76, -78 (cl. 7).) NPBL was created to enable the participating carriers to interchange traffic with each other in the Norfolk/Portsmouth area without building multiple interchange facilities for that purpose. (CSXT Opp'n CSXT-22-661, Sept. 23, 2025.) It also allowed shippers who located their industries along NPBL's tracks to use NPBL to reach any one of the eight connecting carriers. (Id.) Under NPBL's original ownership structure, each participating carrier held one-eighth of the ownership interests in NPBL. (CSXT Pet. to Reject CSXT-1-77 (cl. 2), Feb. 27, 2025.) Each participating carrier also made equal capital contributions to NPBL and appointed one member of NPBL's board of directors. (Id. at CSXT-1-77 (cls. 2, 4, 6).)

The NPBL Participation Agreement also provided that "a uniform rate shall be fixed for the movement of freight cars" over NPBL's facilities "regardless of distance," so "as to yield a net revenue sufficient to pay the interest on [NPBL's] bonds outstanding and a dividend of six percent on the [NPBL] Stock." (Id. at CSXT-1-79 to -80.) The NPBL Participation Agreement further provided for the participating carriers to set their rates for movements that relied on NPBL's facilities no higher than their rates to/from the Norfolk/Portsmouth area that did not rely on those facilities. (Id. at CSXT-1-81.)

In 1917, NPBL entered into an agreement (the 1917 Trackage Rights Agreement) that granted NPBL trackage rights over a 9.3-mile section of track that was owned by the Virginian Railway Company (VRC), then a co-owner of NPBL. (CSXT Compl. CSXT-1-14, May 20, 2025, CSX Transp., Inc. v. Norfolk S. Corp., NOR 42183.) The track extended from NPBL's tracks in South Norfolk to a U.S. Army supply base at the port in Norfolk. (NS Appl. 66, June 13, 2025); see also Port of Va., World War I & the Birth of NIT, <https://www.portofvirginia.com/wp-content/uploads/2023/09/POV-HistoricalWWI.pdf>.

⁷ The original participants in NPBL were New York, Philadelphia & Norfolk Railway Company; Seaboard & Roanoke Railroad Company; Norfolk & Southern Railroad Company; Norfolk & Western Railway Company (NW); Atlantic & Danville Railway Company; Southern Railway Company (SRC), Norfolk & Carolina Railroad Company; and Chesapeake & Ohio Railway Company (C&O). (NS Prefiling Notification 57, Feb. 14, 2025.)

In the 1960s, Norfolk International Terminal (NIT) opened at the site of the U.S. Army supply base, and in 1972, ownership of NIT was transferred to the Virginia Port Authority (VPA), which had been established by the Commonwealth of Virginia to promote the development of ports in the Norfolk/Portsmouth area on a unified, coordinated basis. (NS Prefiling Notification 58 n.3, Feb. 14, 2025; VPA Letter 1, Mar. 5, 2025.) A second deep-water terminal, Virginia International Gateway (VIG), was built in 2007. Gregory Richards, Massive \$450 Million Port Terminal Opens in Portsmouth, THE VIRGINIAN-PILOT (Sept. 7, 2007), <https://www.pilotonline.com/2007/09/07/massive-450-million-port-terminal-opens-in-portsmouth-4/>. The terminals that VPA operates—which include NIT, VIG, and other terminals in the area—are referred to as the Port of Virginia (POV). (VPA Letter 1, Mar. 5, 2025.) An ocean carrier that calls at POV may be directed by VPA to NIT or VIG. (NS Resp. 18, Nov. 20, 2025.) Traffic volumes at POV have grown significantly over the last fifteen years and it is now the third-largest port for intermodal containers on the East Coast. (CSXT Opp’n CSXT-22-77, -231 to -232, Sept. 23, 2025.)

Currently, two Class I rail carriers compete to provide transportation between POV and points inland: NS⁸ and CSXT. To provide such transportation for intermodal container shipments through VIG, both NS and CSXT rely on switching service by Commonwealth Railway (CWRV)—a Class III rail carrier and subsidiary of Genessee & Wyoming Inc. To provide such transportation for intermodal shipments through NIT, NS uses its own track that leads to NIT. In contrast, CSXT must either rely on switching by NPBL or dray the traffic by truck between NIT and VIG (where CSXT’s trains are built) or yards on CSXT’s system. With minor exceptions, CSXT has not relied on NPBL to switch traffic to and from NIT for intermodal shipments. (CSXT Opp’n CSXT-22-47, Sept. 23, 2025.) Instead, to reach NIT, CSXT relies on drayage. CSXT’s cost of drayage between NIT and VIG is subsidized by VPA. (CSXT Opp’n CSXT-22-75 to -76, Sept. 23, 2025.) Historically, VPA has directed CSXT-aligned ocean carriers to VIG. (NS Resp. 18-19, Nov. 20, 2025.) From 2021 to 2023, CSXT handled more of the intermodal container traffic at VIG than NS did. (NS Appl. 121, June 13, 2025.)

As discussed below, due to various consolidations, NPBL is currently owned by NS (57.14%) and CSXT (42.86%). (NS Prefiling Notification 12, Feb. 14, 2025.) Today, NPBL derives the overwhelming majority of its revenues from first-mile/last-mile line-haul switching service that it provides to 21 industrial customers in the Norfolk/Portsmouth area sited on or served by NPBL. (CSXT Opp’n CSXT-22-619, Sept. 23, 2025.) With minor exceptions, all of the industrial customers’ traffic is interchanged with NS or CSXT. (NPBL Reply 2, Nov. 20, 2025.) NPBL also continues to switch interline traffic between NS and CSXT, although the overall interchange traffic handled by NPBL has diminished over time. (CSXT Opp’n CSXT-22-619, -662, Sept. 23, 2025.)

⁸ NS is a Class I rail carrier that operates approximately 19,300 route miles of track. (NS Prefiling Notification 40, Feb. 14, 2025.)

Railroad Consolidations & Supplemental Agreement

In 1959, the Board's predecessor agency, the Interstate Commerce Commission (ICC), approved the acquisition of VRC by Norfolk & Western Railway (NW), one of the original participants in NPBL. See Norfolk & W. Ry.—Merger—Virginian Ry., 307 I.C.C. 401 (1959). In 1982, the ICC approved the acquisition of control of NW and SRC by a new holding company, NSC. See Norfolk S. Corp.—Control—Norfolk & W. Ry., 366 I.C.C. 173 (1982). As a result of these transactions, NS (among other things) acquired control of the track that leads to NIT and became party to the 1917 Trackage Rights Agreement with NPBL.

With respect to the 1982 acquisition of NW and SRC by NSC, the ICC found that, because those carriers mainly operated end to end, the acquisition generally would not reduce the number of rail competitors serving transportation markets. Id. at 216. And in Virginia and North Carolina, where NW's and SRC's systems overlapped, the ICC concluded that, in the particular circumstances of that case, the reduction in the number of rail competitors from three to two would be offset by improvement in the character of the competition, i.e., over more competitive routes, the elimination of redundant tracks, and more diverse geographic competition. Id. at 223.⁹

As a result of the acquisition of NW and SRC, NSC also then indirectly owned a majority interest in NPBL.¹⁰ See Norfolk S. Ry.—Pet. For Declaratory Ord. (Ord. on Referral), FD 36522, (STB served June 17, 2022), aff'd sub nom Norfolk S. Ry. v. STB, 72 F.4th 297 (D.C. Cir. 2023), cert. denied, 144 S. Ct. 1343 (2024). An appendix to NSC's 1980 application to the ICC identified the interests that NW and SRC held in NPBL, but the application itself failed to identify NPBL as one of the entities over which NSC proposed to acquire control. Ord. on Referral, FD 36522, slip op. at 4. CSX did not raise any concern about NSC's acquisition of a majority interest in NPBL during that proceeding, id. at 16-17, and the ICC did not address NSC's acquisition of control of NPBL in its 1982 order.

In 1989, NW, SRC, and CSXT entered into a Supplemental Agreement, related to the NPBL Participation Agreement, that provided for CSXT to appoint two members of NPBL's board of directors and for NW and SRC collectively to appoint three members of the board of

⁹ CSX was formed in 1980 as an indirect holding company for multiple rail carriers, including C&O (one of the original participants in NPBL) and Seaboard Airline Railway (a successor to one of the original participants in NPBL). See CSX Corp.—Control—Chessie Sys., Inc., 363 I.C.C. 521 (1980). In 1987, rail carriers under CSX were dissolved as separate corporate entities and their assets were assumed directly by CSXT. Railroads, 101 I.C.C. 23, 25-26, 26 n.16 (1987).

¹⁰ At the time of the acquisition of NW and SRC by NSC, NW and SRC each held approximately 28% of the ownership interests in NPBL. CSX held the remaining ownership interests (approximately 42%). (NS Prefiling Notification 20, Feb. 14, 2025.)

directors.¹¹ Although not addressed in the Supplemental Agreement, the parties also agreed to have a sixth member of the board of directors. The sixth member serves as president of NPBL and is appointed by the other five members of the board of directors, of which three are appointed by NW and SRC. (NS Resp. 66 & n.223, 67, Nov. 20, 2025.)

In 1991, the ICC granted SRC authority to directly control NW. (NS Prefiling Notification 9, Feb. 14, 2025); S. Ry.—Control Exemption—Norfolk & W. Ry., FD 31791 (ICC served Jan. 14, 1991). At the same time, SRC changed its name to Norfolk Southern Railway Company (referred to in this decision as NSR). (NS Prefiling Notification 9, Feb. 14, 2025); S. Ry.—Control Exemption, FD 31791, slip op. at 1. In 1998, the Board authorized the merger of NW into its parent, NSR (formerly SRC). (NS Prefiling Notification 9, Feb. 14, 2025); Norfolk S. Ry.—Exemption—Norfolk & W. Ry., FD 33648 (STB served Aug. 31, 1998).

Subsequent Activity and Controversy

Prior to 2010, NPBL charged different rates for line-haul switching service (which is defined in its tariff as switching between industries or sidings on or served by NPBL and connecting lines for shipments originated at or destined to locations beyond the terminal) depending on whether the traffic was “domestic” or “import/export.”¹² (CSXT Opp’n CSXT-22-205, Sept. 23, 2025.) Specifically, NPBL charged a “domestic” rate of \$243 per car and an “import/export” rate of \$148.50 per car. (*Id.*) In 2009, NPBL’s management proposed a new rate structure under which NPBL would generally charge a rate of \$210 per car, with the exception of a lower rate per car for unit trains (i.e., trains moving more than 40 cars to one destination under a single waybill). (*Id.* at CSXT-22-38 to -39.) CSXT asked to have that lower rate apply to CSXT’s intermodal traffic to and from NIT. (*Id.* at CSXT-22-39 to -40.) CSXT also offered related volume commitments. (See, e.g., *id.* at CSXT-22-40.) CSXT argued that this approach would increase CSXT’s use of NPBL to reach NIT and therefore would increase NPBL’s revenues. (*Id.* at CSXT-22-42.) NPBL ultimately rejected CSXT’s proposal, establishing a rate of \$210 per car for all traffic effective January 1, 2010. That rate remains in effect today, without being adjusted for inflation. (*Id.* at CSXT-22-38-41.)

CSXT continued to pursue rate reform over the years. For example, in March 2018, CSXT presented a proposal for a lower per car rate for switching intermodal traffic to and from NIT, with a guaranteed volume of cars per year. CSXT also offered free use of its locomotives and fuel. (*Id.* at CSXT-22-51 to -52.) Around the same time, CSXT proposed changes to NPBL’s governance structure, with the purported goal of establishing an NPBL that is “independent of NS.” (*Id.* at CSXT-22-51 to -52, -554 to -555.) CSXT presented an additional proposal in 2024. (*Id.* at CSXT-22-30.) None of CSXT’s proposals have been adopted. (*Id.* at CSXT-22-30, -51 to -55.)

¹¹ The parties explained that the Supplemental Agreement was necessary because the NPBL Participation Agreement fixed the number of directors to correspond to the number of companies owning stock in NPBL.

¹² NPBL also charged, and continues to charge, different rates for the other switching services it provides, including intermediate, inter-terminal, intra-terminal, and intra-plant switching. (E.g., CSXT Opp’n CSXT-22-213 to -222, CSXT-22-327 to -332.)

Effective at the end of July 2016, NS terminated the 1917 Trackage Rights Agreement in accordance with its terms. (NS Appl. 126, June 13, 2025.) NS also terminated other agreements that granted NPBL trackage rights on NS's facilities. (NS Appl. 25 n.44, June 13, 2025.) NS and NPBL have continued to operate under the terminated agreements on a month-to-month basis. (*Id.*) According to NS, NS and NPBL have reached agreement on all terms of a successor agreement, other than the fee that NPBL would pay NS for trackage rights. (*Id.*) In September 2018, NS petitioned the Board to set that fee. That petition was held in abeyance, first pending resolution of related federal court litigation (discussed below), and then subsequently to allow the Board to resolve the issue of control of NPBL in this proceeding. Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223 (STB served July 25, 2019), recons. denied (STB served Dec. 19, 2019); Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223 (STB served Sept. 25, 2025) (denying NS's motion to remove proceeding from abeyance).

In October 2018, CSXT brought antitrust, conspiracy, and contract claims against NS and NPBL in the U.S. District Court for the Eastern District of Virginia. (NS Prefiling Notification 11, Feb. 14, 2025); CSX Transp. v. Norfolk S. R., 648 F. Supp. 3d 679 (E.D. Va. 2023). CSXT asserted that NS used its control of NPBL to deprive CSXT of effective access to NIT. (*Id.* at 688.)

In 2021, NS filed with the Board a petition for declaratory order requesting that the Board institute a proceeding to address certain issues referred to the Board by the district court, including whether the ICC granted NSC approval to control NPBL when it approved the 1982 Transaction. See Ord. on Referral, FD 36522, slip op. at 1. The Board found that the agency did not authorize NSC's control of NPBL in the 1982 Transaction or in the notices of exemption in 1991 and 1998. *Id.* at 1, 9-17, 17 n.25. The Board also indicated that the parties should take appropriate steps to address the unauthorized control issue immediately following resolution of the district court proceeding, including any appeals. *Id.* at 17 n.25.

The Eastern District of Virginia ultimately dismissed CSXT's antitrust, conspiracy, and contract claims on the ground that the claims were untimely under the applicable statute of limitations. The U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision, and the U.S. Supreme Court denied CSXT's petition for writ of certiorari. CSX Transp. v. Norfolk S. Ry., 648 F. Supp. 3d 679 (E.D. Va. 2023), aff'd 114 F.4th 280 (4th Cir. 2024), cert. denied, 145 S. Ct. 1921 (April 21, 2025).

NS's Application

On February 14, 2025, NS filed with the Board an application for a "minor" transaction, seeking approval under 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 to control NPBL. By decision served March 14, 2025, and published in the Federal Register on March 17, 2025 (90 Fed. Reg. 12,440), the Board found that NS's acquisition of control of NPBL should be classified as a "significant" transaction, stated that it would treat NS's February 14, 2025 submission as a prefiling notification for a significant transaction, and permitted NS to perfect its application by supplementing its February 14, 2025 submission. Norfolk S. Corp.—Acquis. of

Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 7-8 (STB served Mar. 14, 2025). NS supplemented its February 14, 2025 submission on June 13, 2025, and on July 10, 2025, the Board accepted for consideration NS’s revised application. Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 7-8 (STB served July 10, 2025).

In its filings, NS states that it is now seeking to obtain control authority as directed by the Board in the Order on Referral. (NS Prefiling Notification 7-8, Feb. 14, 2025.) As stated in the revised application, NS seeks neither the Board’s approval of its past actions nor immunity from antitrust laws in connection with those actions. (NS Appl. 20, June 13, 2025.) Rather, according to NS, “the sole issue for consideration . . . is whether, going forward, NS’s authorized control of NPBL will result in a substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States.” (Id. at 9.)

NS commits not to establish a market-based trackage rights fee for NPBL but instead to have the Board set a trackage rights fee under the Board’s SSW Compensation methodology.¹³ (See NS Prefiling Notification 15, Feb. 14, 2025.) NS also commits not to cause NPBL to change the nature of the rate that NPBL charges for switching service. (Id.) As stated by NS, NPBL’s rate “shall remain a uniform, cost-based rate consistent with [the NPBL Participation Agreement].” (Id. at 15.) NS adds that, regardless of the level of NPBL’s rate for switching service, NS’s continued control of NPBL would not adversely affect competition. (Id. at 28.) NS reasoned that “intensely competitive options” are available to CSXT and its intermodal shippers. (Id.) According to NS, those options include drayage between NIT and CSXT’s lines and intermodal service through other East Coast ports. (Id. at 28-29.)

According to NS, its control of NPBL would not result in a substantial lessening of competition. NS reasons that shippers have access to two rail carriers at NIT: NS and CSXT, in the latter case via NPBL or drayage. (NS Appl. 6, June 13, 2025.) According to NS, authorizing NS’s control of NPBL would not eliminate a rail option because CSXT has always needed to rely on NPBL (or drayage) for access to NIT and because NS will commit to adhere to the principles of the NPBL Participation Agreement with respect to setting a rate for line-haul switching: in particular, a rate that is cost-based with a “modicum of profit” and which applies “uniformly to all customers.” (Id. at 26, 36, 72-74.)

In addition, according to NS, authorizing NS’s control of NPBL would not result in the creation of a monopoly or a restraint of trade. NS argues that international container shippers have the choice to use trucks, a combination of rail/truck, VIG (as an alternative to NIT at POV), or to direct their traffic to other East Coast ports. (Id. at 6.) In effect, in NS’s view, the relevant market is not the market for on-dock, intermodal service at NIT but rather the market for intermodal movements between the East Coast and the Midwest. According to NS, approval of

¹³ The framework for calculating trackage rights compensation, known as “SSW Compensation,” was first established in St. Louis Southwestern Railway—Trackage Rights over Missouri Pacific Railroad—Kansas City to St. Louis, 1 I.C.C.2d 776 (1984), and was modified in St. Louis Southwestern Railway—Trackage Rights over Missouri Pacific Railroad—Kansas City to St. Louis, 4 I.C.C.2d 668 (1987).

NS's control of NPBL will not reduce the competitive options that are available to shippers. (*Id.* at 24, 34-35.)

NS asserts that, because its control of NPBL does not have anticompetitive effects, the Board may not proceed to a public interest assessment under 49 U.S.C. § 11324(d)(2). (*Id.* at 29-30.) Nonetheless, NS states that its control of NPBL would provide public benefits. According to NS, its commitment to having NPBL charge a uniform, cost-based rate that is based on NPBL's fixed and variable costs (1) ensures that all customers moving traffic over the NPBL equally contribute to the NPBL's costs, so no one user is forced to subsidize another user's portion of those costs; (2) ensures the long-term viability of NPBL's operations; and (3) allows NPBL to benefit from being part of NS's corporate family, through lower operating costs, better access to capital for infrastructure investments, cost savings from purchasing and lower insurance premiums, and better liability protections. (*Id.* at 30-31.)

Comments on NS's Application

On September 18, 2025, as corrected September 23, 2025, CSXT filed comments in opposition to NS's application. CSXT asserts that NS failed to present a prima facie case in support of its application, as required by 49 C.F.R. § 1180.4(c)(8). (CSXT Opp'n CSXT-22-101 to -104.) According to CSXT, a prima facie case would have compared market conditions with NS's control of NPBL to market conditions without NS's control of NPBL. (*Id.* at CSXT-22-103.) CSXT claims that NPBL was established "as an independent railroad," (*id.* at CSXT-22-14), and asserts that NS's control of NPBL amounts to a reduction in rail options because it replaces an independent carrier with one controlled by NS (the only other on-dock rail option at NIT), (*id.* at CSXT-22-15). According to CSXT, the Board "does not authorize" such 2-to-1 transactions. (*Id.* at CSXT-22-110.)

CSXT also asserts that NS has used its control of NPBL to exclude CSXT from access to NIT for its intermodal traffic. According to CSXT, NS's exclusionary behavior has included the imposition of what CSXT describes as a cost-prohibitive rate for switching at NIT, along with use of NS's control of NPBL to preclude meaningful consideration of alternate rate proposals and governance proposals by CSXT. (*Id.* at CSXT-22-70 to -71.) CSXT contends that because NS does not rely on NPBL for rail access to NIT (NS has its own direct rail access), it "has no business incentive to approve an NPBL switch rate for [intermodal traffic to and from] NIT that would allow NPBL to serve NS's direct competitor and NPBL's minority owner."¹⁴ (*Id.* at CSXT-22-88 to -89.) CSXT asserts that, due to the level of NPBL's switching rate, CSXT serves NIT only by draying shipments between NIT and VIG (a distance of about eight miles), and that because drayage is inefficient and expensive, many ocean carriers are unwilling to use drayage as a substitute for on-dock rail service at NIT. (*Id.* at CSXT-22-71, -73, -74, -76 to -77.) CSXT adds that drayage at NIT is subsidized by VPA, in part at taxpayers' expense. (*Id.* at CSXT-22-75 to -76.) CSXT asserts that CSXT's zero share of on-dock traffic at NIT, combined

¹⁴ CSXT contrasts the situation with NPBL to that with Conrail, which is also owned jointly by CSXT and NS. According to CSXT, because neither NS nor CSXT can serve the ocean carriers directly in the areas where Conrail operates, each railroad is incentivized to ensure that Conrail operates to ensure access for each carrier. (CSXT Opp'n CSXT-22-91 to -92.)

with CSXT's "minimal share of the total traffic moving through NIT and other POV terminals," indicates that, due to NS's control of NPBL, CSXT is unable to compete effectively with NS at POV. (*Id.* at CSXT-22-76.)

According to CSXT, NS's exclusionary behavior has also included the imposition of operational barriers to CSXT's ability to compete effectively at NIT for intermodal traffic, including: (1) NS's insistence that NPBL interchange such traffic with CSXT at Berkley Yard (a requirement that, according to CSXT, would cause CSXT to incur additional, unnecessary costs); (2) NS's termination of NPBL's rights over certain NS track (referred to as the Connecting Track) that, according to CSXT, would permit more efficient movements between NPBL and CSXT; and (3) NS's allegedly unlawful removal of facilities related to the Connecting Track. (*Id.* at CSXT-22-16, -34 to -36, -81.)¹⁵ CSXT also accuses NS of erecting artificial barriers to CSXT's use of NS's track that leads to NIT (the track that was governed by the 1917 Trackage Rights Agreement). According to CSXT, when attempting to use NPBL to reach NIT in 2015 during a period of extreme port congestion, NS resisted providing operating windows over its track, resulting in CSXT's loss of business. (*Id.* at CSXT-22-47 to -50.)

CSXT further argues that alternative means of transportation are not meaningful alternatives to on-dock rail access at NIT. According to CSXT, trucking is an inadequate alternative because trucks compete for only a small percentage of international intermodal movements along NIT/POV corridors (e.g., those with route distances of approximately 700-1,000 miles and those that are highly time sensitive). (*Id.* at CSXT-22-77 to -78.) CSXT contends that barge service through Richmond, Va., is an inadequate alternative to on-dock rail access at NIT because that service requires an extra movement (from ship to barge to rail) and is slow. (*Id.* at CSXT-22-78.) CSXT claims that other East Coast ports are an inadequate alternative. According to CSXT, the port at which a shipment is delivered depends on factors that include (a) the logistics of loading and unloading containers of various carriers that share space on the same ship, (b) flexibility in times of congestion, and (c) ship routing. According to CSXT, these factors often override factors such as price in determining the port at which a shipment is delivered, meaning that a rail carrier could exercise market power at a port without necessarily losing the business to another port. (*Id.* at CSXT-22-78 to -80.) Lastly, CSXT argues that VIG is an inadequate alternative to on-dock rail access at NIT because VIG has constrained capacity and because, given that VPA decides at which POV terminal a ship will call, CSXT cannot guarantee ocean carriers that CSXT can provide on-dock access for shipments through POV. (*Id.* at CSXT-22-80 to -81.)

According to CSXT, the anticompetitive effect of NS's control of NPBL is evident in whether an ocean carrier is more likely to contract with NS or with CSXT for multi-lane, multi-port service. CSXT asserts that ocean carriers have chosen to contract with NS rather than

¹⁵ In Docket Nos. AB 290 (Sub-No. 299X) and AB 1024X, CSXT filed a petition to reject or reopen and revoke the notices of exemption for NS to discontinue service over, and NPBL to discontinue trackage rights over, the Connecting Track. Those proceedings were held in abeyance by decision served September 25, 2025. CSX Transp. Inc. v. Norfolk S. Corp (Abeyance Decision), NOR 42183 et al., slip op. at 5-6 (STB served Sept. 25, 2025).

CSXT—even when CSXT offered a better price—due to what CSXT calls its “lack of on-dock rail access at NIT.” (*Id.* at CSXT-22-98 to -99, see also CSXT Support Letter (CMA CGM), Mar. 12, 2025.) CSXT also notes that POV believes it would be in a better competitive position vis-à-vis other ports if there were competitive rail service at NIT. (CSXT Opp’n CSXT-22-99 to -100.)

With respect to public benefits, CSXT asserts that the benefits claimed by NS are illusory. According to CSXT: (1) its own proposal for NPBL’s switching rate would not result in cross-subsidization among customers; (2) NPBL’s future revenues would be better supported by increasing intermodal traffic over NPBL, a change that NS resists; and (3) NS has no incentive to strengthen NPBL because NS does not rely on NPBL to reach NIT. (*Id.* at CSXT-22-102 to -103.)

Finally, CSXT claims that it never acquiesced to NS’s control of NPBL. CSXT alleges that it remained silent in 1982, when NSC acquired majority interests in NPBL, because the applicants in that proceeding had stated that NW and SRC had “no intention of exercising control” over certain railroad companies that were operated independently of the NW and SRC systems and in which NW and SRC held a 50% or less interest. (*Id.* at CSXT-22-30 n.9.) As for CSXT’s agreement to the 1989 Supplemental Agreement, CSXT cites the Board’s statement in Order on Referral that parties cannot create control authority through their actions and beliefs. (*Id.* at CSXT-22-59 (citing Ord. on Referral, FD 36522, slip op. at 17).)

CSXT concludes that, should the Board not dismiss NS’s application for failing to present a prima facie case, it should deny the application and order NS to divest a “sufficient stock interest in NPBL and divest sufficient voting rights in NPBL so that NS no longer has the ability to control the decisions of NPBL, either directly or indirectly, or the ability to veto any reasonable proposal to NPBL that would benefit NS’s co-owners of NPBL.” (*Id.* at CSXT-22-20, -120).¹⁶ It separately asks that the Board order NS to “work jointly with CSXT to establish new and independent NPBL management.” (*Id.* at CSXT-22-20) Finally, CSXT states that, should the Board approve NS’s application for control, it condition that approval on (1) ordering NS to reinstall the track assets associated with the Connecting Line, (2) ordering NS to ensure that NPBL will provide meaningful and effective access to its owners, and (3) granting CSXT terminal trackage rights over NS and NPBL lines pursuant to the responsive application. (*Id.* at CSXT-22-21, -124 to -126.) CSXT also requests a seven-year oversight period. (*Id.* at CSXT-22 to -21.)

On August 27, 2025, the U.S. Department of Justice (DOJ) submitted comments on NS’s application. DOJ urges the Board to consider NS’s application in light of the value of railroad competition to the national economy. (DOJ Comments 1-2, Aug. 27, 2025.) DOJ stresses the importance of competitive access to rail infrastructure at terminal points. (*Id.* at 2.) DOJ identifies POV as “a key domestic and international port for a wide variety of important goods” where competitive access to rail infrastructure is critical and states that “harm to competition in

¹⁶ CSXT has in the past proposed that the NPBL Board of Directors be restructured to consist of five directors: two directors appointed by NS, two directors appointed by CSXT, and one director appointed by VPA. (CSXT Opp’n CSXT-22-193, Sept. 23, 2025.)

the handling and transportation of the intermodal containers carrying these goods has the potential to raise prices for American consumers both directly and indirectly as well as to disadvantage farmers and other exporters.” (Id. at 3.)

DOJ also urges the Board to consider NS’s application in light of the long history of NPBL. DOJ notes that NPBL was created for the mutual benefit of each of its participating railroads in the interchange of business and that all owners were to be equally interested. In DOJ’s view, by connecting multiple railroads to NIT, NPBL helped to ensure that competition drove the efficient and cost-effective transportation of goods to and from POV. (Id. at 2.) Against this backdrop, DOJ urges the Board to examine the structure of the market for rail transportation service at POV and related markets, including the intermodal container market as well as the market for non-container shipments. (Id. at 3 n.4.) In DOJ’s view, the Board should examine (1) whether there has been a trend toward vertical integration in the market, and (2) the nature and purpose of NS’s acquisition of control of NPBL. (Id. at 4.) According to DOJ, NS’s application raises the possibility that single-firm control of NPBL may lessen competition, specifically by creating or increasing the ability and incentive on NS’s part to foreclose rivals from sources of supply or distribution. (Id. at 2-3.)

Finally, DOJ urges the Board to consider the resulting impacts if NS’s application were granted, including (1) the possibility that NS would assert broad immunity from antitrust laws in the future relating to NS’s control of NPBL, and (2) the possibility that there will no longer be a live dispute between NS and NPBL over NS’s trackage rights fee to NPBL, leading to a higher rate for NPBL’s switching service and ultimately harming American consumers and businesses. (Id. at 4-5.)

By letter dated July 23, 2025, Angelia Williams Graves, member of the Senate of Virginia, urges the Board to consider the implications of NS’s application not only in terms of competition in transportation but in terms of public safety and environmental impact. (Graves Letter 2, Aug. 11, 2025.)

By letter dated August 26, 2025, Glenn Youngkin, then the Governor of the Commonwealth of Virginia, urges the Board to review closely NS’s application to control NPBL. Governor Youngkin suggests that the competitiveness of POV would be enhanced by ensuring on-dock rail access at NIT by both NS and CSXT. (Youngkin Letter 1-2, Aug. 27, 2025.)

On December 22, 2025, Edward Jewett, Clerk of Court for the City of Richmond, filed a letter urging the Board to deny NS’s application. (Jewett Letter 1, Dec. 22, 2025.)

CSXT also submitted various letters in support of its positions in this case, including letters from three members of the Virginia House of Delegates (Bonita Anthony, Jackie Hope Glass, and Phil Hernandez) as well as letters from representatives of local organizations and concerned citizens, (CSXT Support Letters, Aug. 26, 2025), and a letter from Cheryl Burke, School Board Representative for the Seventh District of the City of Richmond, (CSXT Support Letter, Dec. 29, 2025).

Replies, Final Briefs, and Other Subsequent Filings

On November 20, 2025, NS filed a reply to comments on and opposition to its acquisition of control of NPBL. NS characterizes as a mere oversight its failure in 1982 to obtain approval to acquire control of NPBL. (NS Resp. 6, Nov. 20, 2025; see also NS Final Br. 1, Jan. 6, 2026 (characterizing its omission in 1982 as a “procedural technicality”).) It argues that, for over three decades, CSXT acquiesced to NS’s majority ownership and de facto control, including by expressly consenting to NS’s majority representation in 1989, when it signed the Supplemental Agreement fixing NS’s and CSXT’s seats on the NPBL Board at three and two, respectively. (NS Resp. 12, Nov. 20, 2025.) NS suggests that, if its application at the time had merely included a declaratory statement that NS would acquire control over NPBL, then NS would now hold the requisite authority and the present controversy would have been precluded. (Id. at 253.)

NS claims that CSXT’s complaints about lack of intermodal access through NPBL are based not on NS’s control, but rather on the uniform, cost-based switching rate adopted in 2010 that NS contends is consistent with the NPBL Participation Agreement. (Id. at 256-57.) NS states that “[t]he \$210 switch rate is simply a rational, mathematical calculation, wholly supported by both NPBL’s historic operating expenses and the directive of the [NPBL Participation Agreement] to establish a rate with a near 6% profit yield.” (Id. at 58.) According to NS, this rate is appropriate and has even proven insufficient to allow NPBL to recover its average costs in the period from 2010 to 2023. (Id. at 57-58.) NS argues that, through this control proceeding, CSXT is attempting to acquire a level of access to NIT for its intermodal traffic that it has never possessed. (Id. at 254, 281; see also NS Final Br. 1, Jan. 6, 2026 (“CSX[T]’s opposition is not about protecting competition; it is about securing commercial advantages it could not achieve through investment or negotiations.”).) It asserts that the Board lacks authority to deny NS’s acquisition of control of NPBL based on the alleged effect on the market for intermodal container shipments without first revoking the exemption for intermodal service in 49 C.F.R. § 1090.2. (NS Resp. 42 n.131, Nov. 20, 2025; see also NS Final Br. 17, Jan. 6, 2026.) NS similarly asserts that the Board lacks authority to deny NS’s acquisition of control of NPBL based on the assertion that NPBL’s rates are too high without first determining that NPBL’s rates are unreasonable under 49 U.S.C. § 10707. (NS Resp. 42 n.131, Nov. 20, 2025; see also NS Final Br. 15-20, Jan 6, 2026.)

NS argues that the sole question under 49 U.S.C. § 11324 is whether NS’s control of NPBL results in a substantial lessening of “competition faced by [] ocean carriers,” not whether NPBL’s switching rate adversely affects CSXT’s financial interests. (NS Resp. 9-10, Nov. 20, 2025.) NS argues that its control of NPBL does not result in a substantial lessening of competition faced by ocean carriers due to what NS characterizes as robust competition among transportation options between the East Coast and the Midwest. According to NS, that robust competition is demonstrated by the substantial investments that NS, CSXT, and VPA have made to win business through East Coast ports. (Id. at 10-11.) NS argues that, in light of that robust competition, there would be no substantial lessening of competition and therefore no ground on which to deny NS’s application even if NS used its control of NPBL to foreclose CSXT from on-dock rail access at NIT. (Id. at 11.)

NS disagrees with CSXT's assertion that NS's control of NPBL results in 2-to-1 reduction in rail options at NIT. According to NS, CSXT has access to NIT, both through drayage and through on-dock switching service by NPBL, in the latter case at rates and terms driven by the NPBL Participation Agreement. (*Id.* at 15-16, 18.) NS reiterates its commitment to maintaining NPBL's "special status as a neutral, terminal railroad," including through adherence to a uniform rate for NPBL's switching service. (*Id.* at 61; *see also id.* at 9.) NS argues that, in light of its commitment to maintaining NPBL's neutrality, NS's control of NPBL does not result in any reduction in rail options at NIT. (*Id.* at 68-69.)

In NS's view, CSXT has a small share of on-dock service through NIT because CSXT prefers to use drayage (which is subsidized by VPA) rather than switching by NPBL to access NIT. (*Id.* at 18, 28-29.) NS adds that, due to the way that CSXT prices its service to and from POV, "any reduction in NPBL's rate would simply increase CSXT's profitability and not inure to the benefit of the ocean carriers' competitive choices." (*Id.* at 8.)

NS rejects the suggestion (which NS attributed to CSXT) that NIT should be considered, in analyzing the market, in isolation from other marine terminals and ports. NS notes that, at POV, VPA decides whether a given shipment will go through NIT or VIG; VPA makes that determination based on factors that include the alliances between ocean carriers and railroads and availability of open berths. (*Id.* at 17.) In fact, according to NS, VPA has historically steered CSXT-aligned ocean carriers to VIG and NS-aligned carriers to NIT. (*Id.* at 17-18.) NS concludes that NS's greater share of shipments at NIT reflects, not an exercise of market power by NS, but the efficiencies that VPA gains by sending most of NS's shipments to NIT and most of CSXT's shipments to VIG. (*Id.* at 23-24.)

Looking beyond POV, NS notes that ocean carriers (1) contract for transportation to and from points inland over multiple lanes and at multiple ports; and (2) choose contracts based on a host of factors, including not only the port but route structure and which rail carrier serves the domestic origin or destination. (*Id.* at 34-37.) According to NS, an ocean carrier's bundling of services across ports directly affects the market share of any one rail carrier at any one port or terminal; the proper indication of a rail carrier's market share, according to NS, is the bundle of services that the carrier provides across ports, not merely the rail carrier's share of the market at one particular terminal. (*Id.*) In fact, according to NS, ocean carriers that are aligned with CSXT move the vast majority of their containers bound for the Midwest through the Port of New York/New Jersey. (*Id.*) NS concludes that NS is in a better competitive position than CSXT at POV because NS's predecessor built tracks to NIT, because NS made substantial and earlier investments to move traffic between POV and the Midwest, and because NS offers a more attractive package to ocean carriers for service between East Coast ports and the Midwest. (*Id.* at 30-33.)

NS asserts that a market analysis must also account for competition from barge and trucking. According to NS, competition from barge must be considered because movements by barge from POV inland to the Richmond Marine Terminal relieve congestion at POV. (*Id.* at 46-48.) With respect to competition from trucking, NS argues that such competition, along with the ability to dray shipments among different rail terminals, provided the rationale for the ICC and the Board to exempt from regulation the service that a rail carrier provides as part of an

intermodal container shipment. (*Id.* at 35-36); see also 49 U.S.C. § 10502(a), (f); 49 C.F.R. § 1090.2. NS argues, based on the exemption in 49 C.F.R. § 1090.2, that the burden is on CSXT to show that trucking is not a meaningful competitive alternative. According to NS, “trucking is a competitive alternative for all mileage ranges,” including between POV and the Midwest. (NS Resp. 43 n.132, Nov. 20, 2025; see also NS Appl. NS-13-37, June 13, 2025 (asserting that trucks account for 59% of intermodal container shipping at POV and 66% of intermodal container shipping at NIT).)

NS concludes that, due to the characteristics of the market, NS’s control over rail access to NIT is not a significant factor in the market for transportation between East Coast ports and the Midwest. “CSXT’s lack of ‘on dock’ rail access has an infinitesimal impact on [ocean carriers’] transportation options and is not a determinative factor in [ocean carriers’] decision in using either CSXT or NS at the POV.” (NS Resp. 17, Nov. 20, 2025.) This is especially true, according to NS, because, in a competitively robust market, NPBL’s switching rate is a de minimis factor in the bundle of services for which ocean carriers contract. (*Id.* at 50.) In NS’s view, this conclusion is corroborated by evidence that NS does not earn systematically higher margins for movements through POV as compared to movements through other ports; according to NS, that evidence demonstrates that the alternatives that are available to ocean carriers impose a meaningful constraint on the exercise of market power by NS at POV. (*Id.* at 26.)

Beyond its contention that the relevant market is highly competitive, NS asserts that CSXT’s market analysis and allegations of foreclosure are flawed in other respects as well. According to NS, VIG is not capacity constrained, (*Id.* at 18-21); drayage is not an inherently inferior alternative to on-dock rail access, especially at NIT due to investments that have improved the efficiency and efficacy of drayage, (*id.* at 28-29); and CSXT’s share of the traffic through POV has tended to increase over the past six years, indicating no foreclosure by NS, (*id.* at 26-27).

NS further argues that CSXT acquiesced to NS’s control of NPBL, objecting to that control only when a dispute arose concerning NPBL’s switching rate. (*Id.* at 7.) According to NS, CSXT has clearly understood for decades that NPBL is controlled by NS, as evidenced by the 1989 Supplemental Agreement. According to NS, the Supplemental Agreement demonstrates NS’s willingness to work with CSXT, given that, through the Supplemental Agreement, NS agreed to give CSXT proportionally more representation on the board than CSXT previously had. (*Id.* at 66.) At the same time, NS argues that it does not control NPBL’s board of directors due to the presence of a sixth board member that is independent of both NS and CSXT. (*Id.* at 52.)

With respect to CSXT’s rate proposals and governance proposals for NPBL, NS characterizes those proposals as both economically unsound and inconsistent with NPBL’s foundational principles. (*Id.* at 56.) According to NS, CSXT’s proposals would convert NPBL from a neutral switching carrier, one that “exists for the benefit of its owners,” (*id.* at 49 n.153), and that “charg[es] a uniform cost-based rate[] to each of its connecting carriers,” into a for-profit entity, (*id.* at 52). (See also NS Final Br. 24 n.70, Jan. 6, 2026 (“NPBL is not a for-profit short line like CWRY, able to play connecting carriers off of one another in order to extract the maximum profit from each and every move. Developed and designed to be a terminal carrier, it

acts in a neutral, uniform, cost-based manner. NS's predecessor railroad likely would not have given NPBL the trackage rights that it did if it thought that someday NPBL would have its charter and purpose changed.".)

NS describes CSXT's divestiture proposal as "[a]mbiguous and [i]ll-conceived." (NS Resp. 86, Nov. 20, 2025.) NS asserts that a remedy must be narrowly tailored and that CSXT's divestiture plan would not meet that standard; that divestiture and establishment of NPBL as an independent, profit-oriented enterprise would represent a fundamental change and would threaten competition; that divestiture would fail to recognize investments that NS has made in NPBL; that particular proposals by CSXT, such as giving VPA representation on NPBL's board of directors, could harm customers by elevating POV's interests above other customers; and that CSXT was required to present its divestiture proposal as a responsive application. (*Id.* at 86-93; *see also* NS Final Br. 23 & n.66, Jan. 6, 2026 (arguing that CSXT's request that the Board order NS to divest sufficient NPBL stock so that it no longer may veto proposals by CSXT is not a remedy tied to NS's application for control of NPBL, but rather tied to NSC's acquisition of NW and SRC and their ownership interests in NPBL).)

With respect to DOJ's comments, NS claims that DOJ is concerned, not with structural issues that would create or enhance the opportunity for foreclosure, but merely with vigilance against anticompetitive conduct. (NS Resp. 8, Nov. 20, 2025.) In regard to DOJ's concern that, if the Board approved NS's acquisition of control of NPBL, NS would claim immunity from antitrust enforcement, NS argues that this concern is addressed by the limited reach of immunity under 49 U.S.C. § 11321. According to NS, that immunity (1) arises only "as necessary" to carry out an activity that has been expressly approved by the Board, and (2) does not extend to conduct that falls outside of the Board's jurisdiction. NS further argues that, even when immunity applies, the government could seek penalties or equitable relief and/or an aggrieved party could complain to the Board or seek civil damages before the Board or in court. (NS Resp. 73-75, Nov. 20, 2025.)

In regard to DOJ's concern that, if the Board approves NS's acquisition of control, NS would withdraw its petition to have the Board set NS's trackage rights fee to NPBL, NS argues that this concern is addressed by NS's commitments (1) to maintain a uniform, cost-based rate for switching service by NPBL, and (2) to have the NS/NPBL trackage rights compensation set by the Board using SSW cost-based principles. According to NS, these commitments would be "lasting and enforceable" and would be subject to the Board's oversight for five years. (*Id.* at 76-77.)

NPBL also filed a reply to CSXT's comments in opposition to the application on November 20, 2025, noting that it does not take a position on the merits of NS's application but was filing to "correct the record" with respect to "certain mischaracterizations of NPBL" in CSXT's filing. (NPBL Reply NPBL-7-1, Nov. 20, 2025.) Among other things, NPBL states that it "rejects any notion that its participation in the trackage rights compensation proceeding has been in anything other than good faith" and that CSXT "improperly characterizes" the \$210 per car switch rate as "prohibitively expensive." (*Id.* at NPBL-7-2.)

On January 6, 2026, NS, NPBL, and CSXT each filed final briefs. On January 15, 2026, CSXT submitted a letter claiming that NS improperly introduced a new argument in its final brief. According to CSXT, the new argument was that the Board lacks jurisdiction to consider the impact of an acquisition of control under 49 U.S.C. § 11324 on the market for intermodal container traffic. CSXT added that NS's jurisdictional argument is clearly wrong. (CSXT Letter CSXT-41-1 to -2, Jan. 15, 2026.) On January 20, 2026, NS submitted a letter claiming that it raised its jurisdictional argument throughout this proceeding. NS moved to strike CSXT's January 15, 2026 submission as an impermissible reply. (NS Letter 1-2, Jan. 20, 2026.)

CSXT's Responsive Application and Associated Pleadings

On September 18, 2025, CSXT filed, as a responsive application in Docket No. FD 36836 (Sub-No. 1), an application for terminal trackage rights under 49 U.S.C. § 11102(a). The requested trackage rights would pertain to certain lines owned by NS and NPBL in the Norfolk/Portsmouth area. According to CSXT, the requested trackage rights would overcome anticompetitive conduct by NS by enabling CSXT to serve NIT directly rather than through switching service by NPBL. CSXT asserts on that basis that the trackage rights would meet the "public interest" standard in § 11102(a).¹⁷ (CSXT Responsive Appl. CSXT-23-9 to -13, Sept. 18, 2025.) CSXT indicates that its responsive application for trackage rights is conditioned on the Board's approval of NS's application to acquire control of NPBL. (*Id.* at CSXT-23-5.)

On November 13, 2025, NS moved to summarily reject CSXT's responsive application. According to NS, CSXT failed to identify with sufficient specificity the terminal facilities to which the requested trackage rights would apply. (NS Mot. to Reject 5, Nov. 13, 2025.) In addition, according to NS, CSXT failed to present operational data, financial information, a market analysis of the impacts of the terminal trackage rights application (as opposed to a market analysis of a reduction in the switching charge), an analysis of service changes or adverse impacts to the numerous shippers served by NPBL, an environmental analysis and historic report related to the trackage rights or the reconstruction of the Connecting Track, an estimate of what CSXT's costs would be to operate the terminal trackage rights versus operating via the NPBL switch or via drayage, or traffic projections and evidence that terminal trackage rights would allow CSXT to attract more traffic and be more competitive. (*Id.* at 4-5.)

On November 20, 2025, NS filed comments in opposition to CSXT's responsive application, echoing and expanding on many of the arguments in its motion to reject. NS asserts that any responsive application that is associated with a control application must comply with 49 U.S.C. § 11324, not 49 U.S.C. § 11102(a) as claimed by CSXT. (NS Opp'n to Responsive Appl. 10, Nov. 20, 2025.) NS asserts that the requested trackage rights would fall beyond the Board's conditioning authority for a significant transaction under § 11324. NS reasons that granting its application would not result in a substantial lessening of competition and that,

¹⁷ CSXT argues that the public interest standard is the same substantive standard that governs the Board's consideration of NS's application and the imposition of any conditions to alleviate anticompetitive effects of any approval of the NS application. (CSXT Responsive Appl. CSXT-23-10, Sept. 18, 2025 (citing Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., 1 S.T.B. 233, 448-49 (1996)).)

therefore, the Board may not condition its approval of NS's application based on other considerations. (NS Opp'n to Responsive Appl. 11-12, Nov. 20, 2025.)

NS argues in the alternative that, even if were appropriate to apply § 11102(a) in the present context, the requested trackage rights would not meet the standard therein. (NS Opp'n to Responsive Appl. 15, Nov. 20, 2025.) According to NS, a grant of trackage rights is an exceptional remedy that is inappropriate where the rail carrier that seeks the trackage rights has access through switching; NS referred in that regard to CSXT's opportunity to rely on switching service by NPBL to reach NIT. (Id. at 3.) According to NS, NPBL's switching rate is nowhere near a level that might result in foreclosure and that might therefore meet the public interest standard in § 11102(a), as interpreted in Midtec Paper Corp. v. Chi. & N. W. Transp. Co., 3 I.C.C.2d 171 (1986), aff'd, 857 F.2d 1487 (D.C. Cir. 1988). (NS Opp'n to Responsive Appl. 10, 15, Nov. 20, 2025.) In addition, according to NS, CSXT has failed to demonstrate that the trackage rights would result either in lower costs to CSXT or in ocean carriers switching from other alternatives to service by CSXT at NIT. Finally, according to NS, CSXT has failed to demonstrate: (1) that CSXT could operate over the requested trackage rights without substantially interfering with NS's and NPBL's existing operations, or (2) that compensation for the trackage rights would be adequately secured before CSXT began to use those rights. (Id. at 5-8.) NS concludes that CSXT failed to present a prima facie case in support of its responsive application and that the application therefore should be summarily rejected. (Id. at 31.)

Also on November 20, 2025, NPBL submitted comments in opposition to CSXT's responsive application. According to NPBL, CSXT has failed to show that its use of the requested trackage rights: (1) would be more cost effective than reliance on NPBL's switching service or drayage, and (2) would be operationally feasible. (NPBL Reply 2, Nov. 20, 2025.) With respect to cost, NPBL asserts that CSXT's real complaint is that NPBL's switching rate is not competitive with the subsidized rate CSXT pays for drayage at NIT. (Id. at 8.) According to NPBL, "[t]hat is hardly a basis to argue that NPBL's switching rate is too high." (Id.) NPBL adds that it would be impossible to determine whether the trackage rights would lead to lower overall costs if compensation for the trackage rights were not established until after the Board granted those rights. (Id. at 10.)

With respect to operations, NPBL asserts that the requested trackage rights would result in a substantially different use of NPBL's tracks as compared to either switching by NPBL or NS's own movements to and from NIT. (Id. at 12-13.) NPBL asserts that CSXT's use of the requested trackage rights would introduce two-mile long trains to NPBL's speed-restricted terminal trackage for six- to twelve-hour preference windows, would block roadway crossings and drawbridges for significant periods of time under even the most optimistic scenarios, and would disrupt service to local NPBL industrial customers. According to NPBL, CSXT has failed to acknowledge or justify the "massive operational interference issues" that must be addressed before the Board even considers CSXT's responsive application. (Id. at 2.) In addition, according to NPBL, CSXT has failed to address environmental and historic preservation issues. (Id. at 14-15.)

On December 3, 2025, CSXT filed a reply to NS's motion to summarily reject CSXT's responsive application. According to CSXT, its responsive application identified the affected

tracks with sufficient specificity and need not have provided a cost analysis, a detailed operating plan, or an environmental or historic preservation analysis. (CSXT Reply to NS Mot. to Reject CSXT-32-10 to -14, Dec. 3, 2025.)¹⁸

On December 19, 2025, CSXT filed rebuttal in support of its responsive application. With respect to the applicable standard, CSXT asserts that, while “significant” transactions are subject to a different approval standard than “major” transactions, the Board’s authority to condition approval of a “significant” transaction derives from the same statutory provision—§ 11324(c)—as the Board’s authority to condition approval of a “major” transaction. According to CSXT, if the Board decides to approve the NS control application subject to the condition of granting CSXT’s responsive application, then the “public interest” standard in § 11102(a) is also met, just as the same standard was met in a major transaction. (CSXT Rebuttal CSXT-36-10, Dec. 19, 2025 (citing Union Pac. Corp., 1 S.T.B. at 448-49).)

Putting aside the question of what standard applies, CSXT asserts that NS and NPBL have ignored the reason that CSXT seeks rail access to NIT. CSXT states that it seeks rail access, not simply to lower its cost of serving NIT, but because drayage is an inferior option in the market. (*Id.* at CSXT-36-11 to -12.) CSXT also asserts that NS and NPBL have ignored the details of CSXT’s trackage rights proposal; according to CSXT, it merely proposes to run a daily train that would replace switching service by NPBL—switching service that NS and NPBL have claimed is available. (*Id.* at CSXT-36-13 to -23.) Specifically, in response to NS and NPBL’s allegations of adverse operational impacts, CSXT submits a verified statement by Mark Mayo, General Manager for the Southeast Region for CSXT, to the effect that NS and NPBL have sufficient capacity to accommodate CSXT’s proposal. (See *id.* at CSXT-36-6, -52 to -63.) With respect to when compensation would be determined, CSXT asserts that it would be consistent with the Board’s practice in the context of responsive applications to allow usage to begin upon the Board’s approval of the main application and to have compensation determined later. (*Id.* at CSXT-36-26.) With respect to environmental and historic preservation issues, CSXT asserts that the proposed trackage rights are subject to categorical exemptions under 49 C.F.R. § 1105.6(c)(3) and 49 C.F.R. § 1105.8(b)(3) and that CSXT was not required to expressly invoke those exemptions in its responsive application. (CSXT Rebuttal CSXT-36-27, Dec. 19, 2025.)

On December 19, 2025, NPBL submitted a series of letters from stakeholders in the Portsmouth area. Most of the letters support competitive access at POV, but all of the letters raise concerns that CSXT’s proposed routing (in connection with CSXT’s responsive application) would adversely affect the community. (NPBL Letters, Dec. 19, 2025.)

¹⁸ On December 10, 2025, NS filed a reply to CSXT’s reply to NS’s motion to summarily reject CSXT’s responsive application. NS argues that CSXT misapplied case precedent in defending the sufficiency of its responsive application. NS’s reply will be rejected as an impermissible reply to a reply. See 49 C.F.R. § 1104.13(c); Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025).

On December 23, 2025, VPA filed a “clarification comment” in response to NS’s comments in opposition to CSXT’s responsive application, concerning the capacity of NIT to handle trains. (VPA Clarification, Dec. 23, 2025.) On December 29, 2025, NS moved to strike VPA’s December 23, 2025 comment on the grounds that it was untimely and constituted an impermissible reply to a reply. (NS Mot. to Strike, Dec. 29, 2025.)

On January 6, 2026, CSXT replied by letter to NPBL’s December 19, 2025 submission of letters, arguing that the submission was untimely because it came in after the November 20, 2025 deadline for responses to CSXT’s responsive application, that CSXT is entitled to have the last word regarding that application, that the submitted letters failed to acknowledge that CSXT’s proposed routing would have no greater adverse impact than NPBL’s own operation, and that NPBL’s solicitation of stakeholder letters demonstrates NPBL’s hostility to CSXT. (CSXT Letter CSXT-39-3, Jan. 6, 2026.)

Also on January 6, 2026, NPBL moved to strike portions of CSXT’s rebuttal in support of its responsive application, including the verified statement of Mr. Mayo and associated argument. According to NPBL, those portions of the rebuttal are essential elements of CSXT’s case in chief and therefore should have been provided in CSXT’s responsive application—not in CSXT’s rebuttal, when others no longer had a chance to respond. (NPBL Mot. to Strike 3-6, Jan. 6, 2026.)

On January 26, 2026, CSXT replied to NPBL’s motion to strike, arguing that CSXT’s rebuttal, including the verified statement of Mr. Mayo, constitute appropriate rebuttal to NS’s and NPBL’s allegations concerning adverse operational impacts of CSXT’s requested trackage rights. CSXT reasons that NS and NPBL have asserted throughout this proceeding that NPBL could switch traffic between NIT and CSXT’s system and that NS and NPBL backed away from that assertion in suggesting that CSXT’s operation over specified facilities, by virtue of the requested trackage rights, would create operational problems. (CSXT Reply to NPBL Mot. to Strike CSXT-42-3 to -4, Jan. 26, 2026.)

Also on January 26, 2026, NPBL responded to CSXT’s assertion that NPBL’s submission of letters on December 19, 2025, was untimely. NPBL notes that CSXT’s December 22 and 29, 2025 submissions were filed after November 20, 2025. (NPBL Letter 1, Jan. 26, 2026.)

DISCUSSION

Procedural Motions. The Board will grant NS’s January 20, 2026 motion to strike CSXT’s January 15, 2026 letter. The letter replied to what CSXT characterized as a new argument in NS’s final brief. The argument in question, which concerned the Board’s jurisdiction to deny NS’s application based on the impact on the intermodal container market, was not, in fact, a new argument. (See NS Letter to STB, Jan. 20, 2026, at 1-2.)

The Board will deny as moot NS’s November 13, 2025 motion for summary rejection of CSXT’s responsive application. NS’s motion rested on the assertion that the responsive

application was incomplete. The responsive application is being denied on other grounds, as discussed below.

Despite their being filed untimely, the Board accepts into the record the comments from public officials and members of the community that NPBL submitted on December 19 and CSXT submitted on December 22 and 29, 2025. In the unique circumstances of this case, the Board finds there is good cause to accept these submissions. The Board will likewise allow into the record the comments that VPA submitted on December 23, 2025. VPA's comments, which addressed rail capacity at NIT, were responsive to claims that NS made in its reply to CSXT's responsive application.

The Board will deny NPBL's January 6, 2026 motion to strike portions of CSXT's rebuttal in support of its responsive application, including the verified statement of Mr. Mayo and related argument. Mr. Mayo's verified statement constituted appropriate rebuttal to claims made by NS in its reply to CSXT's responsive application.

Statutory Criteria. A rail carrier must obtain the Board's approval to carry out certain transactions, including the acquisition of control of another rail carrier. 49 U.S.C. § 11323(a)(3). For transactions that do not involve at least two Class I rail carriers, the Board is directed by 49 U.S.C. § 11324 to approve the proposed transaction unless the Board finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d).

The Board must approve the application unless there likely would be anticompetitive effects of the type described in § 11324(d)(1) (e.g., substantial lessening of competition). 49 U.S.C. § 11324(d)(1). And, even if the Board were to find that there likely would be substantial lessening of competition (or creation of a monopoly or restraint of trade), the Board must approve the transaction unless the anticompetitive effects outweigh the public interest in meeting significant transportation needs, see 49 U.S.C. § 11324(d)(2), and cannot be mitigated through conditions. See Soo Line Corp.—Control—Cent. Me. & Que. Ry. US (Soo Line/CMQR), FD 36368, slip op. at 4 (STB served May 4, 2020); Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry. (NS/D&H), FD 35873, slip op. at 14 (STB served May 15, 2015); Paducah & Louisville Ry.—Acquis.—CSX Transp., Inc., FD 34738, slip op. at 4 (STB served Nov. 18, 2005).

Typically, the Board uses its conditioning authority to ameliorate competitive harm that would result from the transaction. See Soo Line/CMQR, FD 36368, slip op. at 4, 7; see also Norfolk & W. Ry.—Purchase—Ill. Term. R.R., 363 I.C.C. 882, 891-92 (1981). In doing so, the harm “must be distinguished from pre-existing disadvantages that other railroads, shippers, or communities may have been experiencing . . . i.e., pre-existing disadvantages that will neither be caused nor exacerbated” by the transaction. Canadian Nat'l Ry.—Control—Duluth, Missabe & Iron Range Ry., FD 34424 et al., slip op. at 14 (STB served Apr. 9, 2004); see also NS/D&H, FD 35873, slip op. at 14 (STB served May 15, 2015). In transactions subject to § 11324(d), the

Board's conditioning power is used to preserve competitive options, not to expand them. Soo Line/CMQR, FD 36368, slip op. at 5.

Competitive Analysis. The present case involves unique circumstances. NS seeks authority to acquire control of NPBL on a forward-looking basis after having failed to seek and obtain authorization when NS acquired de facto control of NPBL in 1982. There has been significant litigation before the Board and multiple courts stemming from Norfolk Southern's failure to seek and obtain such authorization and the status of NPBL since that time. Indeed, the Board determined that this was a significant transaction to ensure that the agency had the information necessary to fully analyze any competitive impacts of the transaction.

After considering the application and the full record in this proceeding, the Board finds that there is not likely to be a substantial lessening of competition, the creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States as a result of this transaction. The Board's conclusions are based on several key considerations. First, NS has made commitments, which are part of NS's application, that appropriately prevent it from using its control over NPBL to advance just its own interests. In particular, NS has committed to maintaining a uniform, cost-based rate for line haul switching service as provided in the NPBL Participation Agreement. No shippers have raised forward-looking competitive concerns regarding traffic that moves or could move over NPBL.

Second, CSXT appears to be raising competitive concerns that are premised more on NPBL having a two-owner structure than on NS's control of the NPBL. CSXT's principal complaint—that NS has blocked NPBL from considering CSXT's rate and operational proposals for intermodal traffic—is not attributable to NS's control (which, again, is restrained both by agreements and commitments in this proceeding), but rather the fact that with NPBL now down to two owners, CSXT lacks the votes to have NPBL deviate from the uniform rate over NS's objection. Even without NS having authorized control of NPBL, that two-owner corporate arrangement has been in place for decades, with CSXT not only aware of the arrangement but consenting to it in 1989. CSXT essentially is seeking a right that it never had under the 1897 NPBL Participation Agreement: enhanced rail access for intermodal traffic to and from NIT, with an intermodal-specific rate, without the consent of NPBL's co-owner.

Limitations on exercise of control. In situations where one railroad obtains majority control over a joint-carrier owned terminal facility, the Board has asked whether control “raises the potential for manipulation . . . in the interests of the majority owner.” Union Pac. Corp.—Control—Mo.-Kan.-Tex. R.R. (UP/MKT), 4 I.C.C.2d 409, 478 (1988). The agency has recognized that, in certain circumstances, the potential for manipulation can be adequately constrained by enforceable, rail carrier commitments. See, e.g., Union Pac. Corp.—Control—Mo.-Kan.-Tex. R.R., FD 30800 et al., slip op. at 1-2 (ICC decided Oct. 17, 1988) (finding that other carriers' interests would be adequately protected by the negotiated non-discrimination condition). Here, NS has represented that, should the Board authorize NS to control NPBL, it will continue to adhere to a uniform, cost-based rate for line-haul switching in conformity with the NPBL Participation Agreement, and there will be no change in NPBL's operations and no elimination of routing or interchange options. (NS Reply to CSXT Pet. to Reject 18, Mar. 7, 2025; NS Appl. 70; see also NS Reply to CSXT Pet. to Reject 7, 24, Mar. 7, 2025 (stating that

“there are no shippers who will see any reduction in their competitive routings and options” and that “[n]o shipper will lose a competitive rail option”); NS Resp. 9 (“NS will continue to adhere to NPBL’s century old governance principles to be an impartial terminal railroad operated on a uniform, cost-plus basis for its connecting carriers to serve customers along its lines.”).)

Under the circumstances here, the Board concludes that a requirement that NS adhere to its commitments, combined with more intensive monitoring during an oversight period, are sufficient to ensure that the competitive balance remains the same going forward. Considered collectively, these commitments will appropriately restrain NS from manipulating NPBL to serve its interests to the detriment of CSXT and the shippers served by CSXT via NPBL, and thus mitigate concerns (including those raised by DOJ) about foreclosure of NPBL as an option for this traffic. Because adherence to these commitments is key to the Board’s approval, if NPBL discriminates in its application of the uniform line-haul switching rate, or other switching rates, in ways that benefit NS to the exclusion of CSXT, or makes operational changes that have a similar effect, the Board would consider reopening this proceeding in order to impose appropriate conditions or take other action. The specifics of NS’s representations are discussed below in the NS Representations section of this decision.

Although NS’s application and the Board’s authorization are forward looking, the Board’s analysis is aided by certain historical facts regarding the traffic and markets here. CSXT has not alleged that, due to NS’s control of NPBL, shippers located on NPBL’s tracks have suffered anticompetitive effects in connection with line-haul service to or from the Norfolk/Portsmouth area. Indeed, while both NS and CSXT interchange line-haul traffic with NPBL, a majority of that traffic is interchanged with CSXT. (NS Appl. 70, June 13, 2025 (“[F]or the ten-year period 2013 through 2022, NPBL interchanged on average 63.6 percent of its railcars with CSXT.”)). CSXT’s opposition is based instead on its allegation that NPBL is not offering it preferred access for intermodal containers to and from NIT. As discussed in greater detail below, this complaint is not attributable to NS’s control of NPBL. Moreover, and as also discussed below, the record here suggests competitive pressure in this segment of the intermodal container market.

Two-Owner Structure. CSXT’s principal allegation with respect to the intermodal container market is that NPBL, under NS’s control, has declined to accept CSXT’s preferred rate structure for rail access to NIT, where CSXT would enjoy a lower rate than industrial customers on NPBL in exchange for a volume commitment and CSXT’s provision of certain equipment to be used in moving traffic between NIT and CSXT’s system. Ameliorating this alleged injury by requiring that NS divest sufficient stock in NPBL such that it can no longer veto CSXT’s proposals—as CSXT specifically requests—would do more than return to a recent status quo. Rather, it would require reopening the ICC’s 1982 decision allowing NSC’s acquisition of SRC and NW, which CSXT did not request and which would be questionable in any event. The Board’s decision today will leave in place a longstanding ownership arrangement and a longstanding governance structure for NPBL’s board of directors—one that was mutually agreed between CSXT and NS’s predecessors (NW and SRC).

In fact, it was decades after NS acquired de facto control of NPBL, and after POV emerged as a major port for intermodal traffic (NS Resp. 261 n.23, Nov. 20, 2025), that CSXT

first raised concerns. CSXT claims that it did not raise concerns earlier due to a statement in pleadings to the ICC in connection with the 1982 consolidation of NW and SRC. That statement indicated that the consolidating companies did not intend to control unspecified entities in which they held less than 50% of the ownership interests and that, at the time, operated independently. However, CSXT's argument is undermined by its actions. For instance, in the 1989 Supplemental Agreement, CSXT expressly agreed to allow the NSC companies to control the majority of seats on NPBL's board of directors. The NSC companies clearly held the majority of ownership interests in NPBL as well as the majority of the seats on NPBL's board of directors, yet, despite those clear indicia of control, CSXT raised no concern.¹⁹ CSXT has not raised concerns with NPBL's provision of the traditional services for which it was created: interchanging traffic between NPBL's rail carrier owners (now, CSXT and NS), and providing line-haul switching to the industries located along NPBL's tracks. What it objects to is its co-owner's refusal to allow NPBL to charge a lower rate to CSXT for intermodal traffic to and from NIT, where both that traffic and the use of NIT to serve that traffic increased significantly in the decades after NS acquired majority control.

CSXT argues that NS's refusal to accept a differentiated rate for intermodal traffic impairs CSXT's ability to serve NIT by direct rail, which weakens competition. However, the statute provides that the Board shall approve control unless it finds that "as a result" of the transaction there is likely to be a substantial lessening of competition. 49 U.S.C. § 11324(d). Even without Board approval of NS's control of NPBL, CSXT would still have the same limitation—the inability to change the rate structure it is charged for switching by NPBL. Indeed, CSXT's requested remedy confirms this basic fact. CSXT requests that the Board not only order NS to divest a sufficient ownership share in NPBL such that it no longer has control, but also that NS no longer can "veto" CSXT's proposals.²⁰ (CSXT Opp'n CSXT-22-120,

¹⁹ In 2022, the Board noted that parties cannot create control authority through their actions and beliefs, such as CSXT's apparent acquiescence to NS's control of NPBL. Ord. on Referral, FD 36522 slip op. at 17. That remains true. The approach here simply reflects the Board's assessment that, as a result of NS's control of NPBL, there is not likely to be substantial lessening of competition.

²⁰ Under a traditional approach that maintains the status quo, a denial of control here, with NS divesting sufficient stock so that it no longer controls NPBL, would result in two owners with veto power to refuse changes to NPBL switching rates and would leave CSXT in the same situation it is in now. (See CSXT Opp'n CSXT-22-600, Sept. 23, 2025 ("Without NS' control of NPBL, CSXT and NS would be joint owners of a short line railroad.")); see also Grupo México, S.A.B. de C.V.—Acquis. of Control Exemption—CG Ry., FD 36780, slip op. at 2 n.3 (STB served Aug. 13, 2024) (agreeing that neither owner of a railroad "controlled" it within the meaning of 49 U.S.C. §§ 10102(7) and 11323(a) "due to their 50/50 ownership split" and provisions in the agreement governing their business arrangement that decisions be arrived at by mutual consent); Paducah & Louisville Ry.—Control Exemption—Paducah & Ill. R.R., FD 33362, slip op. at 2 (STB served Aug. 12, 1997) ("[C]ontrol has not been found in cases exhibiting equal or considerably greater stock interests where the remaining stock was owned as a single block."); UP/MKT, 4 I.C.C. 2d at 478-79 (ordering "reapportioned control" of terminal railroad by requiring "equal ownership" between two rail carrier owners, as opposed to "majority ownership" by one).

Sept. 23, 2025.) NS is correct that this remedy would require reopening of the 1982 acquisition of NW and SRC by NSC, which led to the reduction of NPBL's owners from three to two, and the conditioning of that transaction on one or both of NW and SRC divesting their interests in NPBL. (See NS Final Br. 23 & n.66, Jan. 6, 2026.) CSXT's sought-after remedy makes clear that the competitive harm it has alleged is not a "result" of NS's control but is rather a byproduct of the NPBL Participation Agreement's uniform rate and equal interest provisions and the consolidation of NPBL's ownership over time, including in 1982.

CSXT points to the fact that previously, NPBL had provided two rates for line-haul switching to and from industries located or served by NPBL, one fee for switching import/export traffic and another for domestic traffic, before collapsing those fees into a single rate in 2010. But as NS states, no shipper has challenged the adoption of the \$210 rate. (NS Final Br. 5, Jan. 6, 2026.) CSXT has not alleged that adoption of the \$210 rate diminished NPBL as a competitive option for the traffic moving on NPBL at the time of the rate's adoption. Nor has CSXT alleged that it would have used, or had any interest in using, the prior rate for import/export traffic to move its intermodal traffic to NIT via NPBL.²¹ CSXT's argument instead is that NS, through its control of NPBL, harmed competition by refusing to consider CSXT's proposals for a differentiated rate for intermodal shipments, as an independent NPBL might have. However, CSXT itself has indicated that the parties understand that the NPBL Participation Agreement provided for a uniform rate. (See CSXT Opp'n CSXT-22-70, Sept. 23, 2025 ("[I]n the past, NPBL has agree[d] to override the provision in the Operating Agreement and use different rates for different commodities.").) And NPBL was never meant to be independent of its owners: it was created for their benefit. There have long been only two such owners, as a result of previous merger transactions. Again, CSXT's alleged harm is not the result of NS's control, but rather the fact that CSXT's remaining co-owner in NPBL—NS—has no interest in modifying the default, uniform rate contemplated in the NPBL Participation Agreement by establishing a lower rate for intermodal traffic, and that CSXT does not have the votes needed to override NS. This dynamic would exist regardless of whether NS has control or whether both it and CSXT have equal, 50% ownership shares.²²

²¹ Notably, the \$210 switching fee charged by NPBL is still lower than the line-haul switching rate for import/export movements that was in effect in 2009, once that rate is adjusted for inflation.

²² Because NS did not have Board authority to control NPBL when NPBL adopted the \$210 rate, and when NPBL took other actions that CSXT claims made it more difficult for CSXT to use NPBL to move intermodal traffic to and from NIT, the Board confirms that NS has no immunity from the antitrust laws for its conduct at that time. (See also NS Appl. 20, June 13, 2025 ("NS is not seeking Board approval or antitrust immunity for any past conduct. If there have been violations of relevant antitrust laws in the past, this proceeding will not affect the viability of such claims for prior conduct.").) Likewise, this decision makes no determinations on whether that alleged conduct could support relief in the complaint proceeding at Docket No. NOR 42183, which the Board has held in abeyance by order dated September 25, 2025. Abeyance Decision, NOR 42183 et al., slip op. at 5-6. However, NS's conduct when it lacked control authority is not dispositive in the current proceeding where it is clear that NPBL's unwillingness to agree to a rate significantly lower than the import/export rate formerly charged

As noted, requiring divestiture (presumably to a third party) of NS's NPBL ownership in some amount such that NS could not veto proposals by CSXT would require reopening the 1982 decision. Reopening would, however, raise its own set of complexities. To reopen an administratively final action based on alleged new circumstances, the Board must find that those circumstances, had they been known at the time of the decision, would have warranted a different outcome. See, e.g., Montezuma Grain Co. v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); see also 49 C.F.R. § 1115.3. In deciding reopening requests, the Board also considers "concerns for administrative finality, repose, and detrimental reliance," which are "greater the longer the time between a Board decision in a case and the time a petition for reopening is filed." Soo Line R.R.—Acquis. & Operation Exemption—BNSF Ry., FD 35068, slip op. at 7-8 (STB served Apr. 11, 2025). These concerns are further heightened when the ground for reopening is changed circumstances, where "hindsight [is] the dominant consideration." Ind. Hi-Rail Corp.—Lease & Operation Exemption—Norfolk & W. Ry. Line Between Rochester & Argos, Ind.—Exemption from 49 U.S.C. 10761, 10762, 11144, FD 32162, slip op. at 5 (STB served Jan. 30, 1998).

CSXT has not sought reopening of the 1982 decision so the Board need not decide this issue. But, in any such analysis, the Board would consider the decades that have elapsed since that transaction, investments made and considered since then, and CSXT's long acquiescence to NS's majority ownership of NPBL. It is also unclear whether the agency in 1982 would have required divestiture of NW and/or SRC's NPBL holdings as a condition to approval had it known then that NIT and the intermodal market could develop the way that they did, that NPBL's rates for import and conventional traffic would be made uniform, and that CSXT might, by the mid-2010s, desire to reach NIT directly via trackage rights, or on better economic terms than offered by NPBL. If the agency had ordered divestiture, it is unknown what terms an independent NPBL would have offered to CSXT to handle its traffic to NIT. The agency's position has been that it would not impose conditions to address "speculative" changes in the market; rather it imposed conditions, where necessary, to "preserve the status quo." See, e.g., St. Louis Sw. Ry.—Purchase—Gibbons, 363 I.C.C. 323, 380, 393 (1980); Chi., Milwaukee, St. Paul & Pac. R.R.—Reorg.—Grand Trunk Corp., 2 I.C.C.2d 161, 270 (1984).

The necessary justification for reopening and imposing intrusive conditions upon the decades-old NW and SRC acquisition also is not evident. See Norfolk S. Corp.—Control—Norfolk & W. Ry., 366 I.C.C. at 235-39 (rejecting conditions where not necessary to "ameliorate any harm caused by the consolidation"). CSXT's access to NIT was not at parity with NW's at the time of the 1982 merger or before, as NW reached NIT directly while CSXT would have to rely on NPBL exercising its trackage rights to handle CSXT's traffic. Thus, CSXT's route was long encumbered by an additional interchange, and its attendant coordination requirements. It is also not clear that CSXT's inability to obtain its preferred economic terms from NPBL for intermodal traffic has increased NS's market power in the intermodal container market to justify new conditions. In its response to comments, NS highlights the competitive nature of the intermodal container market at POV and NIT, where competition exists among railroads, ports,

is not "as a result" of NS's control over NPBL, but rather as a result of the factors and circumstances discussed above.

trucks, and barges. (NS Resp. 34, Nov. 20, 2025.) The record here shows that, at POV in 2023, VIG handled approximately three-quarters of the amount of intermodal container traffic that NIT handled and, for most of the VIG rail traffic, CSXT was in-land carrier. (NS Appl. 102, 121, June 13, 2025.) The record also shows that POV competes with other East Coast ports to attract containerized traffic, leading to investments to move more traffic, including discretionary cargo that moves further inland. (*Id.* at 122-24.)²³ That includes investments in expanding terminal capacity by installing larger cranes to service ultra-large container vessels, upgrading rail facilities, increasing truck gate capacity, and building new terminal facilities, as the POV has undertaken. (*Id.* at 119-21.) Similar investments at other East Coast ports also aim to capture this traffic, such as at the Port of Baltimore, which recently invested to modernize its Seagirt terminal (*id.* at 124) and at the Port of Savannah, which advertises its Mason Mega Rail project. Georgia Ports, Mason Mega Rail—Driving Freight into Key Inland Markets, <https://gaports.com/rail/megarail/>. There is, therefore, reason to believe that CSXT's current access to NIT is not determinative of NS's market power in the east coast container market.

NS Representations. The Board will hold NS to certain specific representations that it has made on the record in this proceeding. The Board has imposed as conditions representations made where the applicants either agreed to it or did not expressly oppose it. See CSX Corp.—Control & Merger—Pan Am Sys., Inc. (CSX-Pan Am), FD 36472 et al., slip op. at 35 (STB served Apr. 14, 2022); Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 143 (STB served Mar. 15, 2023). While the Board has expressed concern with imposing generalized representation conditions, the specific representations that the Board will impose as conditions in this decision are those needed to maintain the competitive status quo since NS acquired de facto control of NPBL, and that are clear enough to be enforceable.²⁴ As the rights and responsibilities reflected in these representations are incorporated in the Application²⁵ and underlie the Board's finding that the control transaction satisfies the statutory standard for approval, it is appropriate here, in the unique circumstances of this case, to condition approval on them.

The following representations indicate that, after the Board approves NS's application, NS will continue to adhere to a uniform, cost-based rate for line-haul switching in conformity with the NPBL Participation Agreement, and there will be no change in NPBL's operations and no elimination of routing or interchange options. Adherence to the following representations will help to ensure that NS cannot manipulate NPBL, or otherwise exercise its control, in a way

²³ The competitiveness of POV vis-à-vis other East Coast ports is suggested by the fact that POV advertises when it is the first stop for an ocean carrier that is calling at multiple East Coast ports. (*See* NS Resp. 37, Nov. 20, 2025.)

²⁴ The Board's conditioning power is used to preserve competitive options, not to expand them. Soo Line/CMQR, FD 36368, slip op. at 5.

²⁵ (*See, e.g.*, NS Prefiling Notification 109, Feb. 14, 2025; NS Appl. 19, June 13, 2025.)

that favors its interests over CSXT. Accordingly, the Board will impose as a condition on its approval a requirement that NS adhere to the following representations:²⁶

- (1) “NS will continue to adhere to NPBL’s century old governance principles to be an impartial terminal railroad operated on a uniform, cost-plus basis for its connecting carriers to serve customers along its lines.” (NS Resp. 9, Nov. 20, 2025.)²⁷
- (2) “NS agrees to have the NS/NPBL trackage rights compensation set by the Board using SSW cost-based principles.” (*Id.*)²⁸
- (3) “No existing transportation options for shippers and carriers will be reduced. . . . No existing rights of CSXT or NPBL will be reduced or limited in any way.” (NS Reply to CSXT Pet. to Reject 24, Mar. 7, 2025.)²⁹

²⁶ It is not the Board’s intention in imposing these conditions to foreclose changes to NPBL’s rate structure or operations that are agreeable to both NS and CSXT, including changes to compensation for NPBL’s trackage rights on NS’s facilities that reach NIT. The conditions are meant instead to foreclose unilaterally imposed changes that favor NS’s interests over other parties’ interests.

²⁷ The Board understands NS’s representation that it will adhere to NPBL’s governance principles to mean that NPBL will provide non-discriminatory service to NPBL’s participating carriers and customers on NPBL’s lines. The Board understands NS’s reference to “a uniform, cost-plus basis” to refer to non-discriminatory rates that do not exceed a rate that reflects NPBL’s reasonable costs plus a return on investment as contemplated in the NPBL Participation Agreement.

²⁸ The Board understands NS’s representation on trackage rights compensation to mean that NS will continue to pursue its petition in Docket No. FD 36223, where NS asked the Board to set the trackage rights compensation, and there will be no change to the level of compensation that is ultimately set by the Board except as needed to reflect demonstrable changes in NS’s associated costs to the extent consistent with the Board’s order or as agreed between NS and CSXT (including but not limited to agreement between NS and CSXT on a methodology other than SSW Compensation for setting the trackage rights compensation).

²⁹ The Board understands NS’s representation that there will be no reduction in existing transportation options to mean that there will be no elimination or foreclosure of an existing transportation option, including rail access at NIT; that there will be no imposition of rates or other charges that in effect would reduce or eliminate the availability of rail service, including rail access at NIT; and that NPBL and rail access to NIT will be kept open on commercially reasonable terms, thereby preserving routing options that were available before this approval. The Board understands NS’s representation that no existing rights of CSXT or NPBL will be reduced or limited to mean that there will be no material reduction in NPBL’s trackage rights on NS’s facilities as compared to trackage rights that NPBL enjoyed under trackage rights agreements that NS terminated in 2016; that use of the trackage rights will be kept open on

- (4) “There will be no changes in interchange options. There will be no changes to existing routing options.” (Id. at 13.)³⁰
- (5) “NS will not absorb NPBL’s operations into its own. NS will not be conducting the switching that NPBL currently conducts, nor will NS be setting NPBL’s switch rates. NPBL will continue to do so consistent with its corporate purpose.” (NS Resp. 70 n.229, Nov. 20, 2025.)³¹
- (6) “[W]hen a vacancy occurs in [the position of NPBL President and Board Member], NS is committed to not appointing a former NS or CSXT employee.” (Id. at 74.)

Additionally, NS has agreed to a five-year period of oversight by the Board, (id. at 85), which the Board will impose. NS has represented that, should NPBL desire to raise the switch rate during any prescribed oversight period above a cost-based amount, the Board could require that NPBL submit written justification to do so. (Id. at 86.) The Board finds a five-year oversight period is appropriate and consistent with the Board’s practice in past control cases. See, e.g., CSX-Pan Am, FD 36472 et al., slip op. at 49-50. During this time, NPBL must inform the Board of any changes to its switching and any related tariffs, any significant operational changes, and any significant changes it makes to its track and related facilities, along with an explanation for the changes, and any such changes must be consistent with the representation condition imposed in this decision.³²

commercially reasonable terms, thereby preserving routing options that were available before termination of agreements in 2016; and that CSXT’s rights as co-owner of NPBL will not be impaired.

³⁰ The Board understands NS’s representation that there will be no change in interchange operations to mean that there will be no reduction in interchange or existing routings options without the consent of CSXT, thereby preserving routing options that were available before this approval.

³¹ The Board understands NS’s representation that NPBL will conduct its own operations and set its own rates consistent with NPBL’s corporate purpose to mean that NPBL will conduct its operations and set its rates for the benefit of its participating carriers as contemplated in the NPBL Participation Agreement, without NS unilaterally causing NPBL to discriminate in its setting of rates or provision of service. The Board understands NPBL’s corporate purpose to be the non-discriminatory provision of rail service on facilities that NPBL owns or over which NPBL holds trackage rights, including facilities that lead to NIT, all to permit the connection of customers and facilities on NPBL’s tracks or served by NPBL (including NIT) to interconnecting rail carriers and to permit the interchange of traffic between the systems of interconnecting rail carriers.

³² The representation condition that the Board imposes in ordering paragraph (1) will continue to apply after the conclusion of the five-year oversight period that is established herein.

The Board would consider reopening this proceeding or issuing a supplemental order if it appears that NS is acting inconsistently with these representations. See 49 U.S.C. §§ 1322, 11327. These commitments, combined with regulatory oversight that is available by statute both during and after the oversight period, could help to undo any unforeseen, adverse impact of the Board’s approval of NS’s application.

Requests for Conditions and Responsive Application. Consistent with the foregoing analysis, the Board will deny CSXT’s requested conditions. These include ordering NS’s reinstallation of track assets, ordering NS “to ensure that an NS-controlled NPBL will provide meaningful and effective access to its owners,” establishing an oversight period longer than five years, and notably, granting CSXT terminal trackage rights over NS and NPBL lines pursuant to the responsive application in Docket No. FD 36836 (Sub-No. 1). With respect to the responsive application, CSXT seeks trackage rights over NPBL for the same reasons it asked the Board to deny NS’s control application and order the creation of an “independent” NPBL: i.e., to remedy its lack of access to NIT for intermodal traffic because NPBL will not offer a lower rate. As discussed above, CSXT’s alleged harms are not the result of NS controlling NPBL, but rather are the result of the terms of the NPBL Participation Agreement, including the default uniform rate provision, and the fact that NS, as the other owner of NPBL, is not willing to agree to deviate from that uniform rate provision to support the rate structure CSXT seeks.

In transactions subject to section 11324(d), the Board uses its conditioning authority to ameliorate competitive harm that would result from the transaction, and any such harm must be distinguished from pre-existing disadvantages that will neither be caused nor exacerbated by the transaction. See, e.g., Soo Line/CMQR, FD 36368, slip op. at 4, 7; see also Bessemer & Lake Erie R.R.—Acquis. & Operation—Certain Rail Lines of CSX Transp., Inc. in Onondago, Oswego, Jefferson, Saint Lawrence, & Franklin Cnty., N.Y., FD 36347, slip op. at 9 (STB served Apr. 6, 2020) (finding that “no likely or substantial competitive harm would result from the Transaction itself that would warrant the trackage rights relief sought”). Because trackage rights are not needed to ameliorate a harm resulting from NS’s control of NPBL, CSXT’s responsive application will be denied.³³

The Board notes that CSXT is separately seeking terminal trackage rights over NS and NPBL lines in Docket No. FD 36859. That proceeding was held in abeyance by decision served September 25, 2025, pending resolution of this proceeding. Abeyance Decision, NOR 42183 et al., slip op. at 5-6. Accordingly, CSXT will be able to make arguments that trackage rights are

³³ CSXT states that it filed its responsive application under 49 U.S.C. § 11102 and that the trackage rights it seeks should be granted under the “public interest” standard of that section of the statute. (CSXT Responsive Appl. CSXT-23-8 to -10, Sept. 18, 2025.) But CSXT frames the responsive application as a condition to alleviate alleged anticompetitive effects of the control transaction. (See CSXT Responsive Appl. CSXT-23-5, Sept. 18, 2025 (“The only condition that CSXT requests that would separately require a responsive application is CSXT’s request for . . . terminal trackage rights.”).) As stated above, as a result of NS’s control of NPBL (and with NS’s commitments), there is not likely to be a substantial lessening of competition, creation of monopoly, or restraint of trade as a result of the transaction to justify additional conditions under § 11324(c).

practicable and in the public interest under the standard of § 11102 in that docket. See id. at 6 (“Any outstanding issues in [Docket No. FD 36859] can be addressed following resolution of [Docket No. FD 36836]”). Thus, to the extent there are concerns regarding access to infrastructure at terminal points, (see DOJ Comments 2, Aug. 27, 2025), those arguments can be raised in that proceeding. The Board takes no position here on the merits of any such potential arguments.

Employee Protection. Under 49 U.S.C. § 11326(a), the Board must impose employee protective conditions on its approval of this transaction. Because this transaction is an acquisition of control under 49 U.S.C. § 11323(a)(3), the appropriate employee protective conditions to impose are those set out in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60, aff’d New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979).

Environmental Matters. The Board found in its order accepting NS’s application for consideration that, based on the record as it existed at that time, the transaction qualifies for a categorical exclusion from environmental review under 49 CFR 1105.6(c)(1)(i) and no historic reporting under 49 CFR 1105.8 is required. Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 12-13 (STB served July 10, 2025). There has been no further development of the record that would cause the Board to revisit that conclusion.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. NS’s application to acquire control of NPBL is approved, subject to the condition that NS adhere to the following representations made on the record during the course of this proceeding:

- “NS will continue to adhere to NPBL’s century old governance principles to be an impartial terminal railroad operated on a uniform, cost-plus basis for its connecting carriers to serve customers along its lines.”
- “NS agrees to have the NS/NPBL trackage rights compensation set by the Board using SSW cost-based principles.”
- “No existing transportation options for shippers and carriers will be reduced. . . . No existing rights of CSXT or NPBL will be reduced or limited in any way.”
- “There will be no changes in interchange options. There will be no changes to existing routing options.”
- “NS will not absorb NPBL’s operations into its own. NS will not be conducting the switching that NPBL currently conducts, nor will NS be

setting NPBL's switch rates. NPBL will continue to do so consistent with its corporate purpose.”

- “[W]hen a vacancy occurs in [the position of NPBL President and Board Member], NS is committed to not appointing a former NS or CSXT employee.”

2. The Board will impose a five-year oversight period during which time NPBL must inform the Board of any changes to its switching and any related tariffs, any significant operational changes, and any significant changes it makes to its track and related facilities, along with an explanation for the changes, and any such changes must be consistent with the conditions imposed in this decision.

3. CSXT's responsive application in Docket No. FD 36836 (Sub-No. 1) is denied.

4. Approval of the application is subject to the employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C 60, aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979).

5. NS's January 20, 2026 motion to strike is granted as discussed above.

6. NS's November 13, 2025 motion for summary rejection is denied as discussed above.

7. The comments from public officials and members of the community that NPBL submitted on December 19, 2025, and CSXT submitted on December 22 and 29, 2025, are accepted into the record.

8. VPA's December 23, 2025 comments are accepted into the record.

9. NPBL's January 6, 2026 motion to strike portions of CSXT's rebuttal in support of its responsive application is denied.

10. Petitions for reconsideration of this decision must be filed by April 27, 2026. Requests for stay must be filed by April 27, 2026.

11. This decision will be effective on May 6, 2026.

By the Board, Board Members Fuchs, Hedlund, and Schultz.